IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1896 OF 2022

J.P. Morgan Services India Pvt. Ltd. ….Petitioner

V/s.

Union of India and Ors. ….Respondents

Mr. Darius Shroff i/b. Mr. Sushant S. Murthy for petitioner.
Ms. Sangeeta Yadav a/w. Mr. Dhananjay Deshmukh for respondents.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 17th AUGUST 2022

P.C. :

1 At the outset, Mr. Shroff states that there is a typographical error in prayer clause – (a). The date 22.12.2022 to be read as 22.12.2021. Same is noted.

By consent, petition is taken up for final hearing at the admission stage since affidavit in reply has been filed.

Hence, Rule, made returnable forthwith.

2 Petitioner is challenging two show cause notices which seek to deny refunds that have been already allowed and reached finality in judicial/quasi judicial proceedings. The said show cause notices seek to deny the refund claims on the ground that they are time barred. The show cause notices purported to treat the reminder letters sent to the authorities after petitioner had succeeded in judicial/quasi judicial proceedings and

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were entitled to a refund, as fresh refund. Respondents are treating the same as fresh refund claims and alleged that it is time barred.

3 Petitioner is engaged in the business of various types of back office services largely outside India alongwith certain group entities within India. Since petitioner exports majority of its services to overseas entities, petitioner is not in a position to utilise the accumulated CENVAT credit.

4 During the usual course of business, petitioner filed applications for refund claiming refund of accumulated unutilised CENVAT credit for various periods under Rule 5 of the CENVAT Credit Rules, 2004. The period to which unutilised accumulated CENVAT credit applied was September 2004 to June 2005 and October 2006 to September 2007 and the total refund claimed was Rs.6,61,46,240/-.

5 Petitioner filed two refund claims for the said two periods and applications were filed within limitation provided under Section 11B of the Central Excise Act, 1944. By two adjudication orders dated 12th January 2008 and 28th November 2008, the refund applications were rejected. Aggrieved by the rejection, petitioner filed two appeals before Commissioner (Appeals). While the Commissioner (Appeals) granted partial relief for the first period, i.e., September 2004 to June 2005 by an order dated 30th March 2011, in so far as the second period was concerned, i.e., October 2006 to September 2007, the adjudication order was upheld and

the refund claim was denied in toto vide an order dated 29th July 2010.

6 Impugning these two orders, petitioner filed statutory appeals before the Customs Excise and Service Tax Appellate Tribunal (CESTAT). By two orders dated 11th August 2015 and 5th January 2016, CESTAT allowed the appeals filed by petitioner in full and upheld the refund claim by petitioner. We are informed that an appeal has been filed by the department against Tribunal's order dated 11th August 2015 for the period October 2006 to September 2007 and the said appeal is pending in this Court. Admittedly, no stay has been granted. As regards the order dated 5th January 2016 for the period September 2004 to June 2005, we are informed that no appeal has been filed in this Court.

7 As no refund was forthcoming from the department, petitioner made innumerable trips to make oral request and finally followed it up with letter dated 9th January 2020 seeking refund aggregating to Rs.6,61,46,240/-. Petitioner also claimed interest on the refund amount. Reminders were sent and also respondents were informed about circulars issued by the Central Board for Indirect Taxes which state that when the department wants to file an appeal against the order of CESTAT, the amounts payable under the orders of CESTAT would be payable unless such order is stayed by the High Court and no refund/rebate claim should be withheld on the ground that an appeal has been filed.

8 Strangely, respondent no.3 issued a show cause notice dated 22nd December 2021 alleging that consequent to CESTAT order petitioner had filed refund claim by a letter dated 7th September 2021 which was received by the department on 14th September 2021 and hence, the refund claim was time barred in view of Explanation B (ec) of Section 11B of the Central Excise Act, 1944. Petitioner responded to the show cause notice vide its letter dated 17th February 2022 and pointed out that they had filed the refund claims within time, the refund claims had been rejected, thereafter, appeals were filed to Commissioner (Appeals) and subsequently to CESTAT which had allowed the refund claims of petitioner, though an appeal has been filed by the department no stay has been granted by the High Court etc. and, therefore, the refund was liable to be sanctioned. Petitioner also submitted that Explanation B (ec) of Section 11B was not at all applicable to the facts of the present case because the explanation only comes into play when the tax demand is set aside giving rise to a refund. Petitioner also explained and Mr. Shroff submitted across the bar that this explanation is not applicable in cases where the refund claims have been filed within time and have been rejected and then such rejection has been allowed in appeal.

9 Petitioner had also filed 10 refund claims for 10 quarters, i.e., April 2014 to March 2017 claiming an aggregate sum of Rs.13,90,26,197/-. All the 10 refund claims were rejected by the adjudicating authority. Against

the said order, 10 appeals were filed before the Commissioner (Appeals). By an order dated 27th February 2018, the Commissioner (Appeals) passed an order with respect to 8 quarters partially allowing various refunds as set out in the said order. No appeal has been filed by the department against the said order. On 20th June 2018, the Commissioner (Appeals) passed an order in respect of the remaining 2 quarters, i.e., October 2016 to March 2017 partially granting various refunds as set out in the said order. Copies of these two orders are annexed to the petition at Exhibit C1 and Exhibit C2. Respondents did not file any appeal against this order as well. Therefore, the refunds granted by the Commissioner (Appeals) had become final despite which no refund was given to petitioner.

10 By a letter dated 9th January 2020, petitioner pointed out to respondent no.3 that the refund of Rs.13,90,26,197/- has to be granted since the same was not disputed. Reminder was sent on 7th September 2021. By a communication dated 22nd November 2021, petitioner submitted various explanations and declarations in view of the direction given to petitioner during the last hearing. Strangely, department issued a show cause notice dated 22nd December 2021 similar to the one issued for the period September 2004 to June 2005 and October 2006 to September 2007 alleging that the refund claim was dated 7th September 2021 which had been received by the department only on 14th September 2021 and hence,

was time barred in view of Explanation B (ec) of Section 11B. By a letter dated 17th February 2022, petitioner once again explained that the refund claims had been filed years ago and had been adjudicated upon and no appeal had been filed by the department against the order of the Commissioner (Appeals) allowing certain refunds and hence, the show cause notice was not legal.

11 Respondents have filed an affidavit in reply of one Santosh M. Sonawane, Assistant Commissioner (Refund) affirmed on 8th July 2022. Ms. Yadav made valiant effort to defend the action of respondent but could not get over the hurdle that there is no stay granted against the order passed by CESTAT with respect to the refund application for October 2006 to September 2007 and as regards refund application for September 2004 to June 2005 and the second set of 10 refund applications, respondent has not even filed an appeal challenging the refund orders passed by CESTAT/the Commissioner (Appeals).

12 This Court in ***Karanja Terminal & Logistic Pvt. Ltd. V/s. Principal Commissioner of Income Tax & Ors.***[1] following the judgment of the Apex Court in ***Union of India and Ors. V/s. Kamlakshi Finance Corporation Ltd.***[2] has held that it is of utmost importance that in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of

1. Writ Petition No.1397 OF 2020 dated 31st January 2022
2. AIR 1992 SC 711

This order has been modified by speaking to the minutes of the order dated 8th September 2022.

the appellate authorities. The order of CESTAT and the Commissioner (Appeals) is binding on respondent no.3. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority was not acceptable to the department in itself would be an objectionable phrase and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. The Apex Court has held that if this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

13 Therefore, as there is no stay granted to the orders passed by CESTAT in the only appeal filed by petitioner and no appeal has been filed challenging the order dated 5th January 2016 of the Tribunal granting refund of Rs.1,29,60,000/- for September 2004 to June 2005 and no appeal having been filed against the 10 refund orders passed by the Commissioner (Appeals), respondent no.3 is obliged and bound to follow unreservedly the refund orders passed by CESTAT as well as the Commissioner (Appeals). We agree with petitioner's case that Explanation B (ec) of Section 11B is not at all applicable to the facts of the present case. It is not applicable in cases where refund claims have been filed within time and having been rejected. This Explanation comes into play only when the tax demand is set aside

giving rise to a refund.

14 In the circumstances, we hereby allow this petition and make the Rule absolute in terms of prayer clauses – (a), (b) and (c), which read as under :

> *(a) that this Honourable Court be pleased to issue a writ of Certiorari or a writ in the nature of certiorari calling for the papers pertaining to this matter and after going into the validity thereof to quash and set aside the impugned Show Causes dated 22.12.2021 (Exhibit -E1 and E2 hereto).*
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> *(b) that this Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction ordering and directing the respondents to forthwith withdraw the impugned Show Cause Notices dated 22.12.2021 (Exhibit E1 and E2 hereto).*
>
> *(c) that this Honourable Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction ordering and directing the respondents to forthwith sanction the refund amounts alongwith the applicable interest thereon under Section 11BB of the said Act after the expiry of three months from the date of the original refund claims.*

15 Respondents are directed to pay interest to petitioner on refund amount for the applicable period in accordance with law. The interest will be payable after the expiry of three months from the date of the original refund claim. The refund shall be given within eight weeks from the date of this order being made available to respondent no.3.

16 Petition disposed accordingly. No order as to costs.

(A.S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**

This order has been modified by speaking to the minutes of the order dated 8th September 2022.

Gauri Gaekwad